

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM 1941

**No. 280**

**ROSCO JONES, *Petitioner***

**v.**

**CITY OF OPELIKA, *Respondent***

ON CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

**SUGGESTION THAT JURISDICTIONAL DEFECT  
HAS BEEN SUPPLIED, and PETITION FOR  
REHEARING AND INCIDENTAL RELIEF**

**HAYDEN C. COVINGTON**  
*Attorney for Petitioner*

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MAY IT PLEASE THE COURT:

Comes now your petitioner and respectfully shows to the Court:

That this Court on October 13, 1941, granted to your petitioner a writ of certiorari directed to the Supreme Court of Alabama and that this cause was argued before this court on February 5, 1942. On February 9, 1942, this court rendered an order dismissing the writ "for want of final judgment" as stated in *per curiam* opinion of such date.

Thereafter petitioner duly filed his application for extension of time in which to file a motion for rehearing.

On March 5, 1942, this court granted petitioner to and including April 20, 1942, to file his motion for rehearing. On April 20, 1942, this court ordered the time extended to May 10, 1942, in which to file his motion for rehearing.

Immediately after the order of this court of March 5, 1942, extending the time for motion to be filed, petitioner filed a petition with the Alabama Supreme Court to amend its judgment of May 22, 1941. The Supreme Court of Alabama refused to consider said motion; but, on its own motion, issued a mandate to the Alabama Court of Appeals with direction to affirm the judgment of the trial court.

On March 9, 1942, the Alabama Court of Appeals rendered and entered its judgment affirming the judgment of the trial court. Petitioner immediately filed his motion for rehearing which was overruled by the Alabama Court of Appeals on March 15, 1942. Forthwith petitioner presented to the Supreme Court of Alabama a petition for writ of certiorari to review the judgment of the Alabama Court of Appeals. On April 9, 1942, the Supreme Court of Alabama rendered and entered its judgment denying writ of certiorari and affirming the judgment of the Alabama Court of Appeals, and filed therewith its written opinion stating reasons therefor. That opinion is Appendix A herein.

Petitioner duly filed with the clerk of this court a supplemental transcript of all of the aforesaid proceedings in the Alabama Court of Appeals and the Supreme Court of Alabama, duly certified by the respective clerks of said courts, which transcript has been printed, added to the record printed and now on file herein. Petitioner hereby incorporates and makes a part hereof such printed supplemental transcript of proceedings above referred to.

The record now presents a final judgment by the Supreme Court of Alabama. The judgment of that court affirms the judgment of the Alabama Court of Appeals, affirming the conviction of petitioner by the Lee Circuit Court.

WHEREFORE, petitioner prays

(1) that the writ of certiorari issued herein October 13, 1941, be deemed to include a command to the Clerk of the Supreme Court of Alabama to transmit the judgments of that court, its opinion of April 9, 1942, and the judgment of the Alabama Court of Appeals of March 9, 1942;

(2) that if the present writ of certiorari is not deemed to include the new proceedings and judgments then in such event a new writ of certiorari issue forthwith for such purpose;

(3) that this court's judgment, order and decision of March 9, 1942, dismissing the writ for want of final judgment be vacated and the cause be restored to the docket for rehearing and decision on the merits;

(4) that the original briefs heretofore filed, and the oral argument heretofore had herein (with the exception of so much of such briefs and argument as was concerned with the jurisdictional question) be deemed addressed to the cause as presented to this Court upon the supplemental transcript of proceedings in the courts below since March 6, 1942;

(5) that the judgment of the Lee Circuit Court, of the Alabama Court of Appeals March 9, 1942, affirming said conviction and of the Alabama Supreme Court of April 9, 1942, denying certiorari and affirming the judgments of the lower courts, each and all, be reversed with costs and the matter remitted to the court below there to be proceeded with consistent with the opinion of this court; and

(6) that your petitioner have such other and further relief in the premises as to the Court may seem just and proper.

Dated, Brooklyn, New York, April 25, 1942.

ROSCO JONES, *Petitioner*

by HAYDEN C. COVINGTON

*Attorney for Petitioner*

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay,

HAYDEN C. COVINGTON

*Attorney for Petitioner*

United States of America  
State of New York  
County of Kings

} ss:

Hayden C. Covington, being duly sworn, deposes and says: That he is a member of the Bar of this Court; that he is duly authorized to make this affidavit; that he has read the foregoing petition and is familiar with the contents thereof; that the same is true of his own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

HAYDEN C. COVINGTON

Sworn to before me this 25th day of April, 1942.

W. K. Jackson, Notary Public  
Kings County

[SEAL]

## Appendix A

### STATE OF ALABAMA • JUDICIAL DEPARTMENT THE SUPREME COURT OF ALABAMA

October Term 1941-42

5 Div. 368

Ex parte: Rosco Jones  
(In re: Rosco Jones v. City of Opelika)

### PETITION FOR CERTIORARI to the Court of Appeals

### OPINION

[Filed April 9, 1942]

THOMAS, Justice:

Petitioner was found guilty of a violation of an ordinance of the City of Opelika requiring an annual license for transient agents or distributors of books or pamphlets for sale on the streets of said City. The Court of Appeals reversed the judgment. *Jones v. City of Opelika*, 3 So. 2d 74.

Upon petition for certiorari to this Court by the City of Opelika, a writ of certiorari was awarded and the judgment of the Court of Appeals was reversed and the cause remanded to that Court for further and final disposition. *Jones v. City of Opelika*, 3 So. 2d 76.

Thereafter, and on March 9th, 1942 the Court of Appeals affirmed the judgment of conviction upon the authority of the decision here rendered and on March 17th, 1942 denied application for rehearing.

The petition now before us presents the identical question considered and determined by this Court in *Jones v. City of Opelika*, 3 So. 2d 76. Petitioner has cited some additional authorities which have been considered, the two more nearly in point being *State v. Greaves*, 22 A. 2d 497



From the Supreme Court of Vermont and City of Blue Island v. Anna Kozul, Supreme Court of Illinois, MS. As we read these authorities they interpret Grosjean v. American Press Co., 297 U. S. 233, as depriving all municipalities of the right to exact any license fee whatever, however reasonable the same may be, of anyone desiring to sell pamphlets or literature upon their streets, as violative of both the first and fourteenth amendments to the Federal Constitution. We do not so understand the Grosjean case. There the very form in which the tax was imposed was "in itself suspicious". The opinion further observes that it was "a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties".

In the instant case there is a plain, simple, reasonable license fee fixed for any agent or dealer who uses the streets for the sale of books or pamphlets, and the ordinance takes no account of the particular calling of such agent or dealer, whether minister or layman. We can see no reason against an ordinance of the character here involved and of consequence adhere to our views as expressed upon former consideration of this cause (3 So. 2d 76), to which we make reference for a more elaborate statement of the reasons which impel us to the conclusion here reached.

The writ will accordingly be here denied and the judgment affirmed.

Writ denied. Affirmed.

All justices concur except Knight, J., not sitting.